

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

CRL.A.No. 719 of 2003(C)

SC.464/2000 ON THE FILE OF THE COURT OF THE ADDL. DISTRICT AND SESSIONS
JUDGE, FAST TRACK (ADHOC-II), KOZHIKODE.
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APPELLANT: ACCUSED;

SASI, S/O. KANNAN,
NARUVANKANDIYIL PERUMAL THAZHE, AYANIKKAD,
QUILANDY TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE:

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1. THE SUB INSPECTOR OF POLICE, VADAKARA.
 2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY P.P.SRI.THOMAS JOHN FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 10-10-2007 , THE COURT ON 10/10/2007 DELIVERED THE
FOLLOWING:

Crl.M.A.No. 4690/2003 in Crl.A.No. 719/2003

Dismissed.

10th October, 2007

Sd/-K. Thankappan,
Judge.

mn.

K.Thankappan,J.

Crl.L.P.No. /2006

Judgment
-12-2006

K. Thankappan, J.

Crl.A. No. 719 of 2003

Dated this the 10th day of October, 2007

JUDGMENT

Appellant was the sole accused in S.C.No.464/2000 on the file of the Court of the Addl. District and Sessions Judge, Fast Track (Adhoc-II), Kozhikode. He was charge-sheeted for the offences punishable under sections 354, 374, 493, 506(1) IPC on the allegation that in between the period from 1996 to 1998 he raped PW6 against her will and consent in different places promising to marry her and thereafter withdrew from the said promise and thereby committed the above offences. On the side of the prosecution PWs.1 to 12 were examined and Exts.P1 to P10 were produced. After closing the prosecution evidence the appellant was questioned under section 313 Cr.P.C. He denied the allegation. On the side of the defence, Ext.D1 series letter and greeting cards was marked. After considering the entire evidence the trial court found that the appellant guilty of the offences punishable under sections 354 and 376 IPC and he was convicted thereunder and sentenced to undergo rigorous imprisonment for one year for the offence punishable under section

354 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for one year for the offence punishable under section 376 IPC. The trial court ordered that if the amount of fine was realized, an amount of Rs.10,000/- should be given to PW6. The trial court also ordered that the substantive sentence should run concurrently. The above judgment of the trial court is assailed in this appeal.

2. Heard.

3. The first contention of the learned counsel for the appellant is that the trial court has mis-read the evidence of PW6 to find the appellant committed the offences. The next contention of the learned counsel is that the evidence of PW6 is not corroborated by any other evidence and hence it is not reliable. It is further contended that the investigation conducted by PWs.10 and 12 are not sufficient to prove the case against the appellant.

4. The very inception of the case against the appellant is on the basis of Ext.P9 complaint filed by PW6 in which it is alleged that the appellant raped PW6 against her will and over powering her with his muscle power in a lodge at Mookambika in October, 1996 and few months thereafter in room No.105 of Vrindavan Tourist Home at Thamarassery and on 29-4-1997 in a room at Devaswom Sathram at Thirunelli promising to marry her. PW11

was the Asst. Surgeon examined PW6. He stated that on 3-8-1999 at 11.15 a.m. he examined PW6 who was brought by W.P.C. Pushpa and the complaint was “Sasi എന്ന ആൾ 1996 മുതൽ 1998 വരെ പ്രലോഭിപ്പിച്ച് കൊണ്ടുപോയി ബലാൽ സംഘം ചെയ്തതായി പരാതി”. He also stated that “no abnormality in local examination and external genatamisa normal”. He further stated that “the above mentioned person has undergone sexual intercourse”. He proved Ext.P13 certificate. The evidence of PWs.1 to 5 would show that both the appellant and PW6 were taken rooms in the lodges and “sathram”. PW6 victim deposed that she used to travel in the auto rickshaw of the appellant. She also stated that the appellant promised to marry her and took her to Mookambika Temple. The appellant took a room in a lodge at Mookambika and on the night he raped ignoring her resistance. She further stated that in January 1997 the appellant again demanded her to accompany him to Mookambika for offering a prayer and believing the words of the appellant she proceeded to Maookambika and resided in the same lodge. But

against the promise the appellant again raped her and on the next day he took her to Dharmasthala. There also she resided with the appellant in a rented room and on the next day they returned to their native place. She also stated that in March, 1997 she went with the appellant to Odakkali Temple and the appellant took a room there and at night the appellant raped her ignoring her resistance. According to her, when she accompanied the accused in April 1997 to Thirunelli, the appellant took a room in Devaswom Rest House and there also the appellant raped her repeatedly. Thereafter, when she felt pain in her lower abdomen, the appellant took her to the Medical College Hospital and he stated to the doctor that PW6 was divorced her first husband and he was the husband of her. PW7 is a co-worker of PW6. She deposed that on a day in the year 1998 at about 10 a.m. when she and Kalyani reached in the house of PW6, they saw the appellant engaged in sexual intercourse with PW6. As the appellant saw them near the window, himself and PW6 stood up and having arranged their dhothi and maxi, they opened the door. Then the appellant stated

that he would marry PW6 and in the meantime they should not disclose what they saw in the house of PW6 to others. Taking into consideration the evidence, the trial came to the conclusion that the appellant had repeatedly raped PW6 in different places against her will and promising to marry her and thereafter withdrew from the said promise and hence the appellant had committed the offences.

5. The evidence of PW6 would show that the appellant had repeatedly raped PW6 in different places. Exts.D1 and D2 letters would show that she had knowledge about the marriage of the appellant with Nalini and in that wedlock they had two children. Evidence of PW6 would also show that PW6 was well aware of the family affairs of the appellant. In her examinations she stated that “എന്റെ ഇഷ്ടത്തിന് വിപരീതമായി ബലാൽക്കാരത്തോടെ ലൈംഗിക ബന്ധത്തിൽ ഏർപ്പെട്ടതിനെ തുടർന്നുള്ള പരിക്കുകൾക്ക് ചികിത്സിച്ചതിന് എന്റെ കൈവശം രേഖ ഒന്നും ഇല്ല”. PW6 being a woman of 50 years and having much experience in the life she ought not have accompanied the appellant at Mookambika, a far

of place from her residence. Apart from that in all the occasions of alleged rapes, for more than three years in different places, PW6 had never complained the matter to any body or even to the police. PW6 has given evidence before the court that on these occasions she resisted the action of the appellant. The investigation conducted by Pws.10 and 12 would not reveal that the appellant had given a promise to marry PW6. It has come out in evidence that in the house of PW6 while the appellant was engaged in sexual intercourse with PW6, PW7 and Kalyani came to the house and they saw the appellant engaged in sexual intercourse with PW6. If that be so, the case of the appellant that the appellant repeatedly raped PW6 against her will promising to marry her is not acceptable.

6. In the above circumstances, the finding of the trial court that the appellant had repeatedly raped PW6 in different places against her will and promising to marry her is perverse and is liable to be set aside. Hence, the judgment under appeal is set aside and

the appellant is acquitted. The bail bond executed by the appellant shall stand cancelled.

The appeal is allowed as above.

**K. Thankappan,
Judge.**

Cr.A. 719/2003

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K.Thankappan, J.

Crl.A.No. 719 of 2003

Judgement

10-10-2007